

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 31 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HECTOR VASQUEZ, a.k.a Peter Barker;
a.k.a. Michael Vega,

Defendant - Appellant.

No. 06-10029

D.C. No. CR-01-00659-MHM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Mary H. Murguia, Distict Judge, Presiding

Submitted August 28, 2006^{**}
San Francisco, California

Before: HAWKINS, McKEOWN, and CLIFTON, Circuit Judges.

Hector Vasquez (“Vasquez”) appeals the district court’s determination, on *Ameline* remand from this court, not to resentence Vasquez, arguing that the district

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

court's decision was unreasonable and that the prosecutor's comment was improper. We affirm the district court's decision.

This court employs the reasonableness standard established in *United States v. Booker*, 543 U.S. 220, 261-62 (2005), in reviewing a district court's determination on remand that a sentence imposed would not have been materially different had the court known the Guidelines were advisory. *United States v. Ameline*, 409 F.3d 1073, 1085 (9th Cir. 2005) (en banc). Here, the court imposed a sentence within the Guidelines range, gave thoughtful attention to the sentencing factors, and thoroughly explained its reasons. Because the sentence is reasonable in light of the sentencing factors, we see no reason to disturb the district court's decision.

The prosecutor's allegedly improper remark is reviewed for harmless error. *United States v. Brown*, 327 F.3d 867, 871 (9th Cir. 2003). Because the statement does not appear to be improper, was not relied upon by the district court, and had no apparent effect on the sentencing decision, any resulting error was harmless.

AFFIRMED.